

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cause No. 1:16-CR-00058 AGF

JAMES CLAY WALLER, II,

Defendant.

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SENTENCING HEARING

BEFORE THE HONORABLE AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

DECEMBER 19, 2017

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APPEARANCES

For Plaintiff:

Mr. Larry H. Ferrell
Assistant United States Attorney
555 Independence, 3rd Floor
Cape Girardeau, MO 63703

For Defendant:

Mr. John M. Lynch
LAW OFFICES OF JOHN M. LYNCH, LLC
7777 Bonhomme Ave., Suite 1200
Clayton, MO 63105

Reported by:

Alison M. Garagnani, CCR #475, CSR, RMR, CRR
Official Court Reporter
United States District Court
555 Independence, Room 3100
Cape Girardeau, MO 63703
(573) 331-8832

1 (THE PROCEEDINGS BEGAN AT 11:06 A.M.)

2 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
3 THE DEFENDANT PRESENT:)

4 THE COURT: Are you ready to proceed?

5 MR. FERRELL: The Government is ready, Your Honor.

6 THE COURT: This matter scheduled before the Court
7 today is the United States of America versus James Clay
8 Waller the Second. It is Case Number 1:16-CR-0058-1 AGF.

9 And the United States is represented by Assistant
10 United States Attorney Larry Ferrell.

11 And Mr. Waller is present and represented by his
12 attorney Mr. John Lynch.

13 This matter is scheduled before the Court today for
14 sentencing following the Defendant's plea of guilty, the plea
15 that was to Count I of the indictment. The plea that was
16 entered into in this matter is what we call a (c)(1)(C) plea,
17 which means that it is a proposed finding plea agreement by
18 the parties.

19 I did not accept the Defendant's plea at the time
20 that he appeared before me but did advise the parties that if
21 I was not inclined to accept the Defendant's plea and be
22 bound by the parties' plea agreement, that I would so advise
23 the parties.

24 I have had since that time the opportunity to
25 review the presentence report and other matters with respect

1 to this case, and I am willing to accept the Defendant's plea
2 of guilty in this matter and be bound by the parties' plea
3 agreement, but obviously we should go through the
4 proceedings. I just wanted to let you know it was not my
5 intent to advise you that I was unwilling to abide by that
6 plea agreement.

7 Now, have any victims who were required to be
8 notified of these proceedings, in fact, been notified?

9 MR. FERRELL: They have been notified, Your Honor.
10 And at the appropriate time, as the Court should request,
11 Jacque Waller's mother, Ruby Rawson, would like to address
12 the Court.

13 THE COURT: All right. And she will, of course, be
14 given an opportunity to do so.

15 All right. Mr. Waller, you may recall my name is
16 Audrey Fleissig. I'm the district judge to whom your case
17 has been assigned. I'm going to tell you a little bit about
18 how we're going to proceed here today. I know I discussed
19 this with you somewhat at the time of your plea as well.

20 Under the sentence Sentencing Reform Act of 1984
21 the United States Sentencing Commission issued guidelines for
22 judges to consider when sentencing someone in a criminal
23 case. The sentencing guidelines used to be binding on the
24 judges, but now they are applied in an advisory manner.

25 I am still required to arrive at a sentencing

1 guideline range and to consider that range along with other
2 factors at the time of the sentencing. And in reviewing the
3 parties' plea -- binding plea agreement that is exactly what
4 I have done.

5 So today I will be making calculations under the
6 sentencing guidelines to arrive at a guideline range and
7 consider that range in light of the parties' plea agreement.
8 I will consider the impact of the parties' plea agreement and
9 any other sentencing agreements.

10 Had there been any objections to the presentence
11 report I would have heard those objections and ruled on them,
12 but I did not see objections by either party; is that
13 correct?

14 MR. FERRELL: That's correct, Your Honor.

15 MR. LYNCH: That is correct, Your Honor. We've
16 filed notice of acceptance to the report with the Court.

17 THE COURT: All right. I will consider statements
18 by the Assistant United States Attorney and by your attorney,
19 sir. I will also listen to any statements that you care to
20 make. And I will also hear from any victims who wish to be
21 heard here today.

22 I will consider whether a non-guideline sentence is
23 appropriate after considering whether a departure up or down
24 under the guidelines themselves is appropriate.

25 And then in evaluating the parties' binding plea

1 agreement I also consider all of the factors in 18 United
2 States Code Section 3553(a) to determine whether a guideline
3 or non-guideline sentence is appropriate. These factors
4 include the nature and circumstances of the offense and the
5 history and characteristics of the Defendant, the need for
6 the sentence imposed to reflect the seriousness of the
7 offense, to promote respect for the law and to provide just
8 punishment for the offense, to provide adequate deterrence to
9 criminal conduct and to protect the public from further
10 crimes of the Defendant, to provide the Defendant with needed
11 educational or vocational training, medical care or other
12 correctional treatment in the most effective manner.

13 The factors also include the kinds of sentences
14 available, the need to avoid unwarranted differences between
15 similarly situated defendants who are facing similarly
16 situated offenses and the need to provide restitution to the
17 victims.

18 Now, have both parties received and had an
19 opportunity to review the final presentence report?

20 MR. LYNCH: Yes, Your Honor.

21 MR. FERRELL: The Government has, Your Honor.

22 THE COURT: All right. Mr. Lynch, have you
23 reviewed that with your client?

24 MR. LYNCH: I have, Your Honor.

25 THE COURT: All right. As set forth in the

1 presentence report -- I'm sorry, Mr. Waller, did you need to
2 speak with your attorney?

3 THE DEFENDANT: I have.

4 THE COURT: All right. As set forth in the
5 presentence report, under the sentencing guidelines we begin
6 at a base offense level of 43, and that is by employing the
7 cross-reference on Section 2A6.2, which requires that we
8 cross-reference another section if the offense involved the
9 commission of another offense and we apply the greater of
10 those sections, which in this case is section 2A1.1, which is
11 murder in the first degree, which is how we arrive at the
12 base offense level of 43.

13 From that pursuant to the terms of the plea
14 agreement two levels are deducted for Mr. Waller's acceptance
15 of responsibility taking us to a total offense level of 41.

16 With respect to the criminal history Mr. Waller has
17 three prior criminal convictions, only one of which gives
18 rise to criminal history points under the guidelines, and
19 that is the conviction in 2011, which has -- carries three
20 criminal history points for a total of three points placing
21 Mr. Waller in Criminal History Category II.

22 At a total offense level of 41 and a Criminal
23 History Category of II the sentencing guideline range is 360
24 months to life.

25 Now, are both parties in agreement with respect to

1 those guidelines calculations?

2 MR. FERRELL: The Government is, Your Honor.

3 MR. LYNCH: Yes, Your Honor.

4 THE COURT: All right. I therefore adopt the
5 presentence report as my findings of fact and legal
6 conclusions with respect to the advisory sentencing
7 guidelines. Now, under Local Rule 13.05 it is the procedure
8 of this Court to hold a bench conference in every plea and
9 every sentencing hearing.

10 We will now conduct the bench conference, and this
11 portion of the transcript of this hearing will be filed under
12 seal.

13 And do you have the headphones here as well?
14 That's how we conduct these bench conferences.

15 All right. So, Mr. Waller, this is what's going to
16 happen here. Mr. Waller, what's going to happen here is in a
17 minute is the two attorneys are going to come up here and
18 speak to me, and I'm going to ask you at that time to put
19 those headphones on, and we are going to conduct a discussion
20 off the record -- off the public record.

21 And the first thing I'm going to ask you is if you
22 can hear me. And I just want you to nod your head for yes or
23 shake your head for no, because if you say something, I may
24 not be able to hear you. And if at any time you don't hear
25 or you don't understand what I'm saying or at any time you

1 need to speak with your attorney, then I want you to just
2 raise your hand, and I will send your attorney back to speak
3 with you; okay?

4 THE DEFENDANT: Uh-huh.

5 THE COURT: All right.

6 (Proceedings were held at side bar, outside the
7 hearing of the jury.)

8 (PURSUANT TO LOCAL RULE 13.05, A BENCH CONFERENCE
9 WAS HELD ON THE RECORD AND PLACED UNDER SEAL, AFTER WHICH THE
10 FOLLOWING PROCEEDINGS CONTINUED IN OPEN COURT:)

11 THE COURT: Now, Mr. Waller, can you hear me?

12 THE DEFENDANT: Uh-huh.

13 THE COURT: He has said, "Yes." And I assume we
14 went through this process at the time of your plea as well.
15 We do this in every plea and every sentencing. We discuss
16 whether a Defendant is or is not providing cooperation to the
17 Government: Do you understand that, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: He has said, "Yes." And you understand
20 what I mean by cooperation, sir?

21 THE DEFENDANT: I provided cooperation.

22 THE COURT: Okay. So we're going to have an issue
23 here, folks.

24 MR. LYNCH: Maybe I can make the statement if the
25 Court would allow and that would clarify the issue for

1 Mr. Waller.

2 THE COURT: Mr. Waller, are you able to hear your
3 attorney here, sir?

4 THE DEFENDANT: Yes.

5 MR. LYNCH: Mr. Waller indeed did sit down with a
6 United States Attorney's Office in another jurisdiction for
7 purposes of providing information relating to an unrelated
8 crime. Mr. Waller's position was that in return for that
9 particular offer he was to receive some sort of cooperation.

10 However, he also understands that with respect to
11 this particular case there is no offer of cooperation such
12 that he receives a substantial assistance departure motion by
13 the Government. So he understands and is clear that the
14 Government at this juncture is not filing a motion to get
15 credit for cooperation.

16 Does that make sense?

17 THE COURT: Mr. Ferrell, is there anything that you
18 want to add to this?

19 MR. FERRELL: Other than the fact that it's my
20 understanding that there is no motion at this particular
21 point we think -- we believe factually and legally there's no
22 basis for the motion.

23 Having talked with the U.S. attorneys and
24 investigators involved in that matter out there it's my
25 understanding today that there is no motion before the Court

1 asking to go outside the plea agreement, that the defense is
2 here today to request a sentence of 420 months be imposed and
3 is not requesting a downward departure.

4 THE COURT: All right. And, Mr. Waller, I'm going
5 to tell you the statement that I have received here by the
6 prosecutors in this case and that is a statement stating that
7 you have not provided substantial assistance to the
8 Government certainly at least with respect to the United
9 States Attorney's Office here and that in connection with
10 your sentencing here today that the Government will not be
11 filing a motion for a downward departure from this 420-month
12 agreed sentence on your behalf: Do you understand that, sir?

13 THE DEFENDANT: I did -- I didn't tell the
14 investigators -- I did tell the investigators the other
15 person that was involved in this. I did tell them that.
16 And, yes, I mean, I understand.

17 THE COURT: All right. And you understand,
18 Mr. Waller, that to the extent that you may have provided
19 some information to the prosecutors with respect to this
20 particular case, the case pending against you --

21 THE DEFENDANT: Yeah, I'm talking about that one.

22 THE COURT: All right. And you understand that the
23 decision whether to file a motion for substantial assistance
24 and whether to accept your substantial assistance in
25 connection with the charge that is pending in this court is

1 solely up to the prosecutors: Do you understand that, sir?

2 THE DEFENDANT: Uh-huh.

3 THE COURT: And you understand that I can't make
4 them agree to accept your cooperation in connection with the
5 charge that is pending against you in this court: Do you
6 understand that?

7 THE DEFENDANT: Uh-huh, yes.

8 THE COURT: And you understand that whatever
9 discussions you had with the prosecutors in connection with
10 this current charge was taken into account by the prosecutors
11 when they entered into this plea agreement with you: Do you
12 understand that?

13 THE DEFENDANT: Sure. Yeah.

14 THE COURT: All right. So you understand that this
15 current plea agreement does not provide for you to be
16 receiving any benefit other than what is reflected in this
17 binding plea agreement in connection with any cooperation
18 that you provided to the United States Attorney's Office for
19 the Eastern District of Missouri: Do you understand that?

20 THE DEFENDANT: Okay. Yes.

21 THE COURT: And you understand that you will not be
22 receiving any -- any downward departure from the agreed
23 sentence amount in connection with any cooperation that you
24 provided to the prosecutors in this case?

25 THE DEFENDANT: Okay.

1 THE COURT: All right. And do you have any
2 question about that, sir?

3 THE DEFENDANT: Pardon?

4 THE COURT: Do you have any question about that?

5 THE DEFENDANT: No.

6 THE COURT: All right. And so the statement that I
7 have here is that you have not provided substantial
8 assistance and that no motion for a downward departure will
9 be filed on your behalf in connection with the instant
10 charge; isn't that correct? Is that your understanding as
11 well?

12 THE DEFENDANT: Okay.

13 THE COURT: All right. Now, I am aware, sir, that
14 you filed this pro se motion for a Rule 35 motion in
15 connection with some -- some cooperation that you believe you
16 provided in another district; is that correct, sir?

17 THE DEFENDANT: Yes. On both -- I'm supposed --
18 the guy out there put me in harm's way, and they told me if I
19 would -- if I was to do the things that I did, that they
20 would help me.

21 THE COURT: And you understand, sir, that that --
22 those matters are not before me now?

23 THE DEFENDANT: I understand that.

24 THE COURT: Do you understand that?

25 THE DEFENDANT: I do now, yes.

1 THE COURT: You understand that was provided to
2 another office and that that procedure of a Rule 35 motion is
3 one that can apply to a sentence after it has been imposed:
4 Do you understand that? Do you understand that, Mr. Waller?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And so I don't know what has or hasn't
7 happened with respect to that other office.

8 Mr. Ferrell, his understanding is that nothing
9 would impact this sentencing here today.

10 Mr. Ferrell, do you have any understanding one way
11 or another whether the possibility of a Rule 35 motion from
12 that district is still an open question?

13 MR. FERRELL: It is not, Your Honor. I appreciate
14 the opportunity to clarify the record. I spoke directly with
15 the Assistant United States Attorney handling that
16 investigation as well as the investigating officers.

17 Mr. Waller provided information he had about an
18 assault which occurred there. This assault occurred on video
19 camera in front of correctional officers, and the defendant
20 in that case admitted his crime.

21 So according to -- well, my evaluation of the facts
22 and evaluation of the facts and the facts provided by the
23 Assistant United States Attorney Mr. Waller's providing the
24 statements in no way rises to the level of substantial
25 assistance as with regard to filing a motion for downward

1 departure.

2 THE COURT: All right. And, Mr. Waller, have you
3 heard what just has been said with respect to the Rule 35 pro
4 se motion that you filed?

5 THE DEFENDANT: Yes. That's beyond the facts.

6 THE COURT: All right.

7 THE DEFENDANT: Mr. Ferrell is apparently not aware
8 of all that took place, or he just doesn't want to help me
9 for what happened, because I was put in some danger --
10 ongoing danger because of the -- of the gang members that
11 were involved.

12 I'm getting -- I'm unfortunately getting ready to
13 go back into federal prison and not provided protection,
14 because those gang members have been convicted, and now
15 because of their convictions there is nothing set in place to
16 protect me.

17 MR. LYNCH: Mr. Waller, can you hear me?

18 THE DEFENDANT: Uh-huh.

19 MR. LYNCH: Mr. Waller has been apprised of what
20 Mr. Ferrell just informed the Court with respect to the
21 nature of any cooperation offer in the Southern District of
22 California.

23 With respect to any safety concerns Mr. Waller has
24 I've already notified the U.S. Marshals that in the event
25 there would be a safety issue the U.S. Marshals are possessed

1 of sufficient resources to accommodate any issue with respect
2 to Mr. Waller's residency in the Federal Bureau of Prisons.

3 So he has been aware made aware of that phenomenon.
4 Notwithstanding, I do believe that he is well aware that with
5 respect to this case there is no motion for a departure by
6 the Government for purposes of providing cooperation.

7 Mr. Waller has also been made aware that his own
8 pro se motion to compel, a 35(b) motion in an unrelated
9 matter, was, A, inapplicable in this particular case and, B,
10 premature in light of the fact that he had not been sentenced
11 yet.

12 So with respect to both aspects -- A, cooperation
13 in this case, B, cooperation in this California matter --
14 Mr. Waller has been made aware the answer is simply no at
15 this juncture.

16 THE COURT: All right.

17 THE DEFENDANT: Yes.

18 THE COURT: Am I -- and you understand that,
19 Mr. Waller?

20 THE DEFENDANT: Yes.

21 THE COURT: And, Mr. Lynch, will you be in a
22 position to following the sentencing in this matter to
23 discuss with Mr. Waller what, if any, recourse he has with
24 respect to any cooperation that he provided to the other
25 district?

1 MR. LYNCH: Yes, ma'am. And absolutely I've
2 already informed Mr. Waller that I would do that for him
3 following the sentencing today.

4 THE COURT: And you understand that as well,
5 Mr. Waller?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Is there anything further
8 that needs to be placed on the record with respect to
9 cooperation?

10 MR. FERRELL: No, Your Honor.

11 MR. LYNCH: Not on behalf of the Defendant, Your
12 Honor.

13 THE COURT: All right. Then we will return to the
14 open record, and you can go ahead and take those headphones
15 off, sir.

16 Now, as I stated, in the Statute Section 3553 --

17 MR. LYNCH: Your Honor, I hate to interrupt, but
18 Mr. Waller says he's not feeling well and would like a glass
19 of water.

20 THE COURT: That's fine.

21 MR. LYNCH: If I can find a glass of water
22 somewhere.

23 THE COURT: That's a different matter.

24 (A discussion was held off the record.)

25 THE COURT: Are you okay, Mr. Waller?

1 THE DEFENDANT: Yeah.

2 THE COURT: All right. Now, as I stated, the
3 Statute Section 3553 also lists the factors under the statute
4 that I should consider in setting the appropriate sentence
5 and in evaluating the propriety of the parties' binding plea
6 agreement.

7 And, Mr. Lynch, would you now like to speak on
8 Defendant's behalf both by way of allocution and to address
9 those factors. After that time I will give you an
10 opportunity, Mr. Waller, to make a statement. And I will
11 hear from any victims who wish to make a statement. And
12 finally I will hear from Mr. Ferrell.

13 MR. LYNCH: Yes, Your Honor. Thank you. And I
14 will keep it brief.

15 Your Honor, as the Court is fully aware, this case
16 comes from a very difficult crime that occurred in this
17 community. I would ask the Court to accept the 420-month
18 joint recommended sentence. It's a substantial sentence,
19 Your Honor.

20 I would also note that it fits squarely within the
21 designated guideline range. So if the Court is going to
22 engage in a comparative analysis for purposes of avoiding an
23 unwarranted disparity, the requested sentence would not
24 create such an unwarranted disparity if the Court were
25 inclined to further engage in such an analysis.

1 I would say this from Mr. Waller's point of view.
2 He has difficulty speaking when he's nervous. So he's
3 thinking what he wants to say, but it doesn't come out as far
4 as being articulated in the way he would like it to, so I'm
5 speaking on his behalf in many respects.

6 This particular requested sentence was also the
7 product of much negotiation between the Government and myself
8 over the course of several months. I think it is a fair and
9 equitable result to a particularly egregious case.

10 But the most important aspect Mr. Waller wanted me
11 to emphasize to the Court -- and I'm not going to get into
12 the facts and circumstances underlying the crime at issue
13 because of the sensitivity associated with that. Mr. Waller
14 wants to provide much needed closure to his children, to the
15 family of the deceased and all the parties that were affected
16 by this particular crime.

17 He has readily accepted responsibility for this
18 crime not only in the state case but also in this case. And
19 I think the Court should acknowledge that acceptance with
20 respect to imposing sentence in this case and give everybody
21 the closure they need in this close-knit community.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 Mr. Waller, it is now your opportunity to make a
25 statement if you wish. Please understand, sir, you are not

1 required to say anything at all. Your attorney has spoken on
2 your behalf, but it is your right to do so. And I will hear
3 anything that you wish to say, sir.

4 THE DEFENDANT: Okay. Is this the only time I'm
5 going to get to talk with everyone?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: All right. Well, I want to start
8 off with in -- in respect to my -- to the family. Can I look
9 back?

10 THE COURT: You may.

11 THE DEFENDANT: Your Honor, I had a -- had a
12 beautiful family, but for -- I had beautiful kids, and I
13 should not have had to accept adultery. I shouldn't have
14 had -- I shouldn't have had to accept it. I shouldn't
15 have -- I should not have accepted that kind of stuff. And
16 when I was put in that position, obviously I didn't handle it
17 very well at all. And she -- it just got out of hand.

18 You guys have showed me no mercy, and I can
19 appreciate that. I also -- I want to -- my kids, all I --
20 all I wanted to be was their dad. That's it. I didn't want
21 to share them with anybody. And now unfortunately -- and I
22 understand you have kept them -- you kept my kids from my
23 family that had nothing to do with this.

24 And there was -- there was a lot of promises made
25 by the prosecutor over there and here, and unfortunately for

1 me it's -- they just -- it just wasn't -- it's like they had
2 amnesia, and I can appreciate that too.

3 And I'm sure you've said a lot of mean things about
4 me. And I can -- and it's -- it's -- some of it's true.
5 Some of it ain't. And I can appreciate that the -- I can
6 appreciate the fact that I want to get this -- I want to get
7 this closure. I hope you-all are getting closure. I -- I --
8 I hope you have got closure.

9 I miss my kids terribly. I have -- I have -- I --
10 I have wrote them a thousand letters, and I know they
11 haven't -- they haven't seen one of them, not one letter.
12 And, you know, I get pictures of them, and I get to see
13 them -- I get to see them grow up on Facebook.

14 Unfortunately -- and unfortunately my wife will
15 never get to see them, not at all. And I -- and I -- and I
16 can tell you that that was not what I wanted. I wanted us to
17 have our family, and our kids deserved to be a family. They
18 did deserve to be a family. And that wasn't my choice.

19 That was -- but I did -- I did make some bad
20 choices. I made a mistake. And I've accepted -- I accepted
21 full -- I have accepted full responsibility, every bit of it.

22 And I can appreciate all of the things that you've
23 done. I do appreciate, Cheryl, you taking care of -- of --
24 of my babies. I miss them very much. Thanks.

25 THE COURT: Thank you.

1 Mr. Ferrell, are there some victims who would like
2 to be heard in this matter?

3 MR. FERRELL: Yes, Your Honor. Ms. Ruby Rawson
4 would like to address the Court. And Ms. Rawson is the
5 mother of Jacque Sue Waller.

6 MS. RAWSON: All right. I stand here today with
7 mixed emotions. For almost 18 years he was a part of our
8 family. We celebrated birthdays, holidays, anniversaries and
9 took vacations together. We had good times.

10 And speaking of anniversaries, yesterday would have
11 been yours and Jacque's, your 24th. Remember how you would
12 always remind us how many years you'd been in the family?
13 How and why did it have to come to this?

14 And for the last year of Jacque's life when she was
15 telling us that you were going to kill her I couldn't believe
16 what she was telling me. I said, "Doesn't he realize we
17 won't let him get away with it?" She said, "Mom, he thinks
18 he's smarter than everyone. "

19 I remember one time when she called, and she was so
20 scared, and I told her to call 911. She said she wouldn't do
21 it, because she said it would hurt your chances for getting a
22 pilot's license, and she wanted you to have the opportunity
23 to get a good job.

24 Her dad wanted to come down with her brother to
25 change your attitude, but she refused saying that it would

1 only make matters worse. How much worse could they have
2 gotten?

3 We didn't know how evil you had become. She also
4 told me you wouldn't let her live because she knew too much
5 on you. She said you had killed someone before and you would
6 do it again. She was so scared that she said, "Mom, I just
7 don't want to be dead."

8 Then we got the call on June 1st that no mother
9 ever wants to hear. Cheryl told us, "Mom, he did it. He's
10 killed her." You had killed our precious Jacque, the mother
11 of your children.

12 For two long years we had to worry about what you
13 had done with her. Stan had every intention of trying to
14 kill you, and he would have except then that he would never
15 find Jacque. And after a long discussion with the sheriff
16 and Lieutenant James, he decided to let the law deal with
17 you.

18 We could not tell the kids we knew it was you that
19 had killed her. When we did tell them, it was heartbreaking.
20 The kids were so upset and wondering if you would come after
21 them and kill them too.

22 On June 8th, 2013, we had to bury our precious
23 Jacque on our fiftieth wedding anniversary.

24 And now after six long years we will get the
25 satisfaction of knowing you will never be a part of your

1 children's lives. You won't get to see how great Addison is
2 at basketball and soccer or what a great soccer player Maddox
3 is or Avery in gymnastics and dance.

4 Grandpa was with Avery when she caught a 6-pound
5 bass and got a nice buck last season. Maddox got a deer two
6 years ago, and he has the makings of a really good soccer
7 player Addison is a natural athlete, and she will be
8 beautiful no doubt.

9 Bob and Cheryl have taken over the role of mother
10 and father, and your name is seldom ever mentioned.

11 And we have never tried to keep the kids away from
12 your family. Your family has never talked to us or asked us
13 about seeing the kids. Never.

14 Jacque is talked about often and lovingly just like
15 you never even existed except as a nightmare, or, as Jacque
16 had to say, just a sperm donor.

17 Two months ago we picked up the kids from school,
18 and the latest news about your plea agreement came on the
19 radio. Avery said, "They're talking about our dad" and
20 listened very intently to what was being said and said, "I
21 knew he strangled her, but I didn't know he beat her to
22 death. Why can't they do to him what he did to her?" So you
23 see, they know how you truly are.

24 It's so sad it had to come to this. You could have
25 just let her get the divorce, but you chose to throw her

1 away. You had a beautiful family, but you threw them all
2 away.

3 Jacque did come back to tell us good bye one day.
4 We were at Cheryl's house watching the girls while Cheryl and
5 Maddox had gone to town. No doors opened or closed, but in a
6 very clear voice we heard Jacque say, "I'm home." Avery was
7 in her bedroom. She came out, and she said, "I heard Cheryl
8 say she was home."

9 Cheryl and Jackie's voices were so much alike I
10 couldn't tell them apart on the phone. There is no doubt
11 that she just wanted to let us know she is nearby and only a
12 heartbeat away.

13 You may have killed her physical body, but you will
14 never kill her spirit. I wouldn't be surprised if she was
15 here today in spirit. She always did have a great sense of
16 humor.

17 We are getting old, and I doubt we'll ever see you
18 again. But you can go off to your prison cell assured that
19 we wish you nothing but bad things. That's not very nice of
20 us, but what you did to our family is unforgivable.

21 I pray that God forgives you, because I can't. I
22 may in time, but right now I just can't.

23 THE COURT: Mr. Ferrell, are there any further
24 victims who would like to be heard today?

25 MR. FERRELL: We did not plan on anyone else

1 addressing the Court. I don't know in light of the remarks
2 that have been made if there was any other members of the
3 family that wish to address the Court.

4 With the Court's permission --

5 THE COURT: You may.

6 MR. FERRELL: -- Mrs. Cheryl Brenneke would like to
7 address the Court.

8 MS. BRENNEKE: This won't be long because I haven't
9 prepared anything.

10 So much of what you just said is just laughable.
11 Acting as if you had not had several affairs. Should she
12 haven't had accepted adultery, Clay? Should she have
13 accepted that? Don't act like it didn't happen. Don't try
14 to paint yourself with a good brush. She should not have had
15 to accept all of your adultery and abuse, manipulation and
16 abuse.

17 What about the six holes you dug before you used
18 the last one? Six holes. Don't act like it was just some
19 crazy notion that you snapped one day. That is not what
20 happened. It was cold. It was calculated. Evil. That's
21 it. Evil sits before me. Shame on you. Shame on you.

22 THE COURT: Are there any further victims that
23 would like to be heard?

24 MR. FERRELL: No, Your Honor.

25 THE COURT: Mr. Ferrell.

1 MR. FERRELL: If it please the Court, Your Honor.
2 There is so much that could be said right now, but in light
3 of the presentence report and in light of the statements made
4 by the victim's family and in light of the binding plea
5 agreement which has been accepted by this Court I'm going to
6 exercise discretion and self-restraint.

7 I would simply like to say that despite whatever
8 statements the Defendant may wish to make here in the
9 courtroom or otherwise the Court is aware of the facts in
10 this case as set out in the presentence report and that
11 Jacque Sue Waller was the victim of domestic abuse for years
12 and years, and Clay Waller made the decision to take her
13 life, and he told her in advance that if she ever filed for
14 divorce, it would be signing her own death warrant.

15 He thought about this for months. He dug the grave
16 the day before and spent the night in the home of his
17 girlfriend in Illinois before he committed this murder. And
18 in the course of this murder he brutally beat and strangled a
19 loving mother and beautiful young woman and left their three
20 children without parents.

21 There is absolutely -- the only thing the
22 Government would say at this point with regard to the plea
23 agreement is it's regrettable that the death penalty is not
24 available in this case, because in the opinion of the
25 Government that would be the only true sentence that should

1 be imposed, but that is not available.

2 We ask the Court simply to accept the plea
3 agreement in this case and impose the sentence of 420 months,
4 because we believe it's in the best interest of the people of
5 the United States of America to resolve this case in this
6 matter, and we ask the Court to sentence this Defendant to
7 420 months in the Federal Bureau of Prisons.

8 THE COURT: Thank you.

9 Is there anything further from either of the
10 parties?

11 MR. LYNCH: Not on behalf of the Defendant, Your
12 Honor.

13 THE COURT: Anything further,
14 Mr. Ferrell?

15 MR. FERRELL: No, Your Honor.

16 THE COURT: All right. Then I will now proceed
17 with respect to the sentencing in this matter.

18 There's no good -- there is no good answer here.
19 There's no good result here. There are times when our system
20 of justice cannot do all that we would hope it can accomplish
21 for us, because we can't, of course, ever bring somebody back
22 to life. And what our system of justice has to offer us in
23 situations like this is inadequate, but it's the best we have
24 to offer.

25 I have reviewed this matter carefully. It is a

1 tragic matter, but I do find that in this instance the
2 sentence -- the sentencing guideline range properly reflects
3 the factors that I need to consider under the statute.

4 I have looked at the Defendant's background and
5 history. I have taken into account his own difficult
6 childhood, his own mental health issues, and I have taken
7 that into account in evaluating whether this is or is not an
8 appropriate sentence.

9 I have also tried to take into account the nature
10 and circumstances of this offense, which could not possibly
11 be any more tragic than they are to have a young woman lose
12 her life -- lose her life at the hands of her husband and to
13 leave three children essentially without parents. The nature
14 and circumstances of the offense are as tragic as any that
15 could ever come before the Court.

16 And, nevertheless, I believe balancing all of the
17 factors here taking into account Mr. Waller's age at the age
18 of 47, taking into account the sentence that has been agreed
19 to by the parties of 420 months, which is 35 years if I'm not
20 incorrect, Mr. Waller will be in his eighties before the time
21 that this sentence or close to -- I realize he's been in
22 prison for -- he's been in custody for a couple of years, but
23 he'll be close to 80 years old at the time that that 35 years
24 runs.

25 And it appears, I believe, the family has been

1 represented in this matter vigorously and appropriately by
2 the United States Attorney's Office and that the United
3 States Attorney's Office has attempted to take into account
4 what is also to be achieved from closure in this matter.

5 And for all of those reasons I believe that a
6 sentence of 420 months is sufficient but not more than
7 necessary to achieve the statutory sentencing objectives.

8 I can't say for sure, Mr. Waller, in light of your
9 comments here today that it fully holds you accountable,
10 because you still seem to think that some of what has
11 happened here was somehow the fault of Jacque Waller. And if
12 that is your thinking, I don't know if that's what you
13 intended when you made some of the comments that you did, but
14 that's kind of what it sounded like, sir.

15 THE DEFENDANT: Do you mind if I say something
16 about that? I mean, because -- because of my speech it's
17 sometimes -- I say things that are an easier word to get out.

18 THE COURT: All right. So am I correct, sir, in
19 stating that it was not your intent here today to suggest
20 that Ms. Waller was -- was at all to blame for what occurred
21 here?

22 THE DEFENDANT: Oh, no, it was -- it was actually
23 all my fault. I'm taking full responsibility for that.

24 THE COURT: All right. So thank you, sir. I
25 appreciate you saying that. And I hope that that

1 clarification by you is helpful to the family and friends of
2 the victim in this matter.

3 But, in any event, I do believe that a sentence of
4 420 months is sufficient but not more than necessary to
5 achieve the statutory sentencing objectives. I trust that it
6 will, in fact, hold you accountable, Mr. Waller, and deter
7 you from any similar acts in the future, that it will I hope
8 deter others from engaging in similar conduct, and I believe
9 that this sentence is -- is consistent. I believe it does
10 not achieve -- it does not create any disparity among
11 similarly situated defendants who are facing similarly
12 situated offenses.

13 I do believe that in light of the lengthy term of
14 the sentence here that it will, in fact, protect the public
15 from further crimes of the Defendant and serve to detour both
16 you and others from similar conduct in the future.

17 And it is also my hope, sir, that while you are in
18 the Bureau of Prisons you will receive educational and
19 medical and mental health treatment that you may need while
20 you are in the Bureau of Prisons.

21 And, perhaps, if nothing else for you, sir, you
22 have heard that it is not the desire of Ms. Waller's sister
23 to keep -- keep your family from seeing your children. And
24 35 years is a long time, and we'll just have to see how
25 things develop over the course of those years.

1 Now, does either party have any objections to my
2 consideration of the statutory sentencing factors or believe
3 there's any particular factor I failed to properly consider?

4 MR. FERRELL: The Government does not, Your Honor.

5 MR. LYNCH: One moment, Your Honor.

6 THE COURT: Yes.

7 MR. LYNCH: We have no objection, Your Honor.

8 THE COURT: All right. And so the sentence that I
9 intend to impose here is pursuant to the binding plea
10 agreement in this matter, a sentence of 420 months to be
11 followed by five years of supervised release.

12 It is my understanding that there is no request
13 being made with respect to restitution; is that correct?

14 MR. FERRELL: That's correct, Your Honor.

15 THE COURT: There is, of course, a special
16 assessment of \$100 that I must impose as a part of this
17 sentence.

18 And, of course, the Defendant has agreed as part of
19 his plea agreement to certain conditions of forfeiture that
20 will also be a part of his judgment in this matter.

21 Now, is there any reason that I should not proceed
22 with respect to the formal statement of the sentence at this
23 time?

24 MR. LYNCH: Your Honor, I would only add that part
25 of our requested sentence includes that the sentence be

1 imposed served concurrently with the sentence imposed in the
2 Circuit Court of Cape Girardeau County under Docket Number
3 12-CG-CR-00686-01.

4 THE COURT: That is my understanding as well, and
5 that also was a part of the parties' binding plea agreement,
6 and that is my intent to order that that sentence run
7 concurrently.

8 MR. LYNCH: Thank you, Your Honor.

9 THE COURT: Anything further before I formally
10 state the sentence?

11 MR. FERRELL: Nothing further from the Government,
12 Your Honor.

13 MR. LYNCH: Not on behalf of the Defendant, Your
14 Honor.

15 THE COURT: Pursuant to the Sentencing Reform Act
16 of 1984 and the provisions of 18 U.S.C. 3553(a) it is the
17 judgment of the court that the Defendant, James Clay Waller,
18 II, is hereby committed to the custody of the Bureau of
19 Prisons to be imprisoned for a term of 420 months.

20 This sentence shall run concurrent to the sentence
21 the Defendant is currently serving for the State of Missouri
22 in Docket Number 12-CG-CR-00686-01 pursuant to the provisions
23 of the United States Sentencing Guideline Section 5G1.3.

24 Upon release from imprisonment the Defendant shall
25 be placed on supervised release for a term of five years.

1 Within 72 hours of release from the custody of the
2 Bureau of Prisons the Defendant shall report in person to the
3 probation office in the district to which the Defendant is
4 released.

5 As part of your supervision you must comply with
6 the following mandatory conditions of supervision: You must
7 not commit another federal, state or local crime. You must
8 not unlawfully possess a controlled substance. You must
9 refrain from any unlawful use of a controlled substance. It
10 is recommended that the mandatory drug testing be suspended
11 based upon the determination that you pose low risk of future
12 substance abuse.

13 You must cooperate in the collection of DNA as
14 directed by the probation office if the collection of such
15 sample is authorized pursuant to 42 U.S.C. Section 14135(a).

16 For a domestic violence crime as defined in 18
17 U.S.C. Section 3561(b) you must participate in an approved
18 program for domestic violence.

19 As part of your supervision you must comply with
20 the standard conditions of supervision that have been adopted
21 by this Court.

22 And, Mr. Lynch, I know the standard conditions were
23 set forth in detail in the presentence report as well as the
24 reason for each condition. Did you have an opportunity to
25 review those with your client?

1 MR. LYNCH: I did, Your Honor.

2 THE COURT: Do you wish me to read those standard
3 conditions, or do you wish to waive the reading of the
4 standard conditions?

5 MR. LYNCH: We'll waive the reading of the standard
6 conditions, Your Honor.

7 THE COURT: All right. Thank you.

8 As part of supervision you must comply with the
9 following additional special conditions: If it is determined
10 there are costs associated with any services provided, you
11 shall pay those costs based on a co-payment fee established
12 by the probation office.

13 You must participate in a mental health treatment
14 program and follow the rules and regulations of that program.
15 The probation officer, in consultation with the treatment
16 provider, will supervise your participation in the program on
17 matters such as provider, location, modality, duration,
18 intensity, et cetera.

19 You must submit your person, property, house,
20 residence, vehicle, papers, computers as defined in 18 U.S.C.
21 Section 1030(e)(1), other electronic communications or data
22 storage devices, or media, or office, to a search conducted
23 by a United States Probation Officer.

24 You must warn any other occupants that the premises
25 may be subject to searches pursuant to this condition.

1 The probation officer may conduct a search under
2 this condition only when reasonable suspicion exists that you
3 have violated a condition of supervision and that the areas
4 to be searched contain evidence of this violation.

5 The Court finds that the Defendant does not have
6 the ability to pay a fine.

7 It is further ordered that the Defendant shall pay
8 to the United States a special assessment of \$100, which
9 shall be due immediately.

10 And, Mr. Lynch, does the Defendant have any request
11 to make with respect to the Bureau of Prisons?

12 MR. LYNCH: Your Honor, we would ask the Court in
13 consideration of a recommendation that he be considered for
14 placement at the federal BOP facility in Greenville, Illinois
15 and/or Marianna, Florida.

16 THE COURT: I'm sorry, Greenville or --

17 MR. LYNCH: Marianna, Florida.

18 THE COURT: Marianna, Florida?

19 MR. LYNCH: Yes. M-a-r-i-a-n-n-a.

20 THE COURT: I further request that the Defendant be
21 housed at the Bureau of Prisons' facility in Greenville or in
22 Marianna, Florida. This request is made to the extent it is
23 consistent with the Bureau of Prisons' policies.

24 And you understand, Mr. Waller, I can't order that
25 you be sent to a particular facility. I can only make that

1 request, and then that will be up to the Bureau of Prisons.

2 THE DEFENDANT: Yes.

3 THE COURT: Now, does either party know of any
4 reason why the sentence should not be imposed as stated?

5 MR. FERRELL: No, Your Honor.

6 MR. LYNCH: No, Your Honor.

7 THE COURT: All right. Then I order the sentence
8 be imposed as stated.

9 The Defendant is also subject to forfeiture
10 pursuant to the provisions and the agreement of forfeiture
11 that is set forth in detail in the plea agreement that was
12 entered into between the parties.

13 Is there anything further that the United States
14 wishes to place on the record with respect to forfeiture?

15 MR. FERRELL: Not at this time, Your Honor.

16 THE COURT: All right. Then, Mr. Waller, I have
17 just a couple of other matters to state to you. Obviously,
18 you're going away to prison for a very, very long time. And
19 when you get released, I won't be around anymore.

20 But I hope when you are in the Bureau of Prisons
21 that you will take advantage of all of the programs that they
22 have to offer you, that you will work on your own mental
23 health issues, that you will try to get control of the anger
24 issues that you obviously have and that you will at some
25 point during this time come to an appropriate place in terms

1 of accepting responsibility for the events that have occurred
2 here.

3 I also want to advise you, sir, that you may appeal
4 your conviction if you believe that your guilty plea was
5 somehow unlawful or involuntary or there was some fundamental
6 defect in the proceedings that was not waived by the guilty
7 plea.

8 Under some circumstances a Defendant also has the
9 right to appeal his sentence imposed, however -- the sentence
10 itself. However, the Defendant may have waived that right as
11 part of a plea agreement, and you have entered into a plea
12 agreement that waives some or all of your right to appeal the
13 sentence itself.

14 Now, those waivers are generally enforceable, sir,
15 but if you believe that the waiver itself is not valid or
16 doesn't cover some ground that you wish to raise, you may
17 present that theory to the appellate court.

18 You have the right to apply for leave to appeal
19 in forma pauperis, which means without payment, and your
20 attorney or the Clerk of Court will prepare a filing notice
21 of appeal upon your request.

22 But please know, sir, that with few exceptions any
23 notice of appeal must be filed within 14 days of the entry of
24 judgment, and I fully expect that judgment to be entered
25 today.

1 And, Mr. Lynch, I ask that you review with your
2 client and properly file the form in compliance with Local
3 Rule 12.07.

4 MR. LYNCH: Your Honor, may I make my usual record
5 in that regard?

6 THE COURT: You may.

7 MR. LYNCH: With respect to the plea agreement
8 filed with this Court on October 5th, 2017, there contained a
9 provision wherein Mr. Waller waived his right to appeal most
10 aspects of this particular matter, including the sentencing
11 imposed if the Court was inclined to accept our binding
12 recommendation.

13 In light of the fact that the Court did, indeed,
14 accept this particular recommendation I have reviewed the
15 notice of compliance with Local Rule 12.07a and again
16 explained to Mr. Waller his appellate rights where
17 applicable, applicable, or if any.

18 Based on discussions, Mr. Waller did, indeed,
19 execute this particular notice advising me that he does not
20 want my office to file a notice of appeal on his behalf, for
21 which I will now file with the Court.

22 THE COURT: All right. And, Mr. Waller, is that,
23 in fact, correct that you have advised Mr. Lynch not to file
24 any notice of appeal upon your behalf?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. Thank you. And thank you,
2 Mr. Lynch.

3 MR. LYNCH: Thank you.

4 THE COURT: Is there anything further for the
5 Court's consideration?

6 MR. FERRELL: No, Your Honor.

7 THE COURT: All right. Then we'll be adjourned in
8 this matter. Thank you.

9 (PROCEEDINGS CONCLUDED AT 12:04 P.M.)

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C E R T I F I C A T E

I, Alison M. Garagnani, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 40 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated Cape Girardeau, Missouri, this 29th day of September, 2018.

/s/Alison M. Garagnani
Alison M. Garagnani, CCR, CSR, RMR, CRR
Official Court Reporter